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12/16/10

COOPERATIVE AGREEMENT
(Agriculture Farm Pipeline Reimbursement)

THIS AGREEMENT, ENTERED INTO AND EFFECTIVE ON December 20, 2010, is between the Trustees of The California State University, hereinafter called "TRUSTEES", for and on behalf of the California State University, Fresno, hereinafter "CSUF", a public agency, and the City of Fresno, a California Municipal Corporation, hereinafter called "CITY".

RECITALS

1. CITY desires to widen North Willow Avenue between East Bullard and East Barstow Avenues from two (2) lanes to three (3) lanes southbound and construct a right turn lane at the southwest corner of East Bullard and North Willow Avenues ("Project"). The Project has been environmentally assessed pursuant to the California Environmental Quality Act (CEQA), resulting in a Finding of Conformity to MEIR No. 10130.
2. TRUSTEES and CITY have negotiated an understanding that the widening of Willow Avenue will require an easement and right-of-way for public street purposes of CSUF campus farm land, by separate agreement ("Agreement and Grant of Easement"), and removal and replacement of an existing irrigation pipeline of the CSUF campus farm ("Pipeline"), resulting in a new upgraded irrigation pipeline system ("System"), more specifically described/depicted in Exhibit "A" attached hereto and incorporated herein.
3. CITY and TRUSTEES have determined that replacing the existing Pipeline with the System will minimize the impact to the CSUF campus farm caused by the removal of the existing Pipeline.
4. CITY has conducted a cost benefit analysis and determined that replacing the existing Pipeline with said System will be the least costly of the replacement options.
5. CITY and TRUSTEES have selected the System as the most practical and cost effective replacement option for the existing Pipeline and CITY is agreeable to fund in arrears costs actually incurred by CSUF, as lead agency, in removing and replacing the Pipeline as provided herein, not to exceed \$91,331.30, contingent upon TRUSTEES execution of Agreement and Grant of Easement to CITY by separate agreement.
6. This Agreement does not provide for or constitute any Project approval(s).
7. The CITY and TRUSTEES are parties to a certain Campus Pointe Settlement Agreement and General Release of All Claims executed on September 17, 2007, and enter this Agreement with reference thereto.

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained, to be kept and performed, the parties agree that:

SECTION I

CITY AGREES:

1. To contribute funding in arrears, in lieu of actually removing, relocating and/or replacing the Pipeline, for costs actually incurred by CSUF in removing the Pipeline and installing the System, not to exceed \$91,331.30, contingent upon PARTIES' execution of the separate Agreement and Grant of Easement, as full and complete compensation for removing, relocating and/or replacing the Pipeline, including all related, incidental and consequential costs and damages including loss of use, upon the terms and conditions herein.
2. That the estimated Project Schedule is attached as Exhibit "B" hereto and incorporated herein.
3. That Project funds sufficient for CITY's Pipeline obligations hereunder are allocated and available in the current CITY budget and will be encumbered to this Agreement.

SECTION II

TRUSTEES AGREE:

1. To accept CITY's funding contribution in lieu of any removal, relocation and/or replacement of the Pipeline and as complete reimbursement therefore, including all related, incidental and consequential costs and damages including loss of use, by CITY's payment in arrears of costs actually incurred by CSUF in removing the Pipeline and installing the System, not to exceed \$91,331.30, contingent upon TRUSTEES execution of Agreement and Grant of Easement to CITY by separate agreement, upon the terms and conditions herein.
2. That TRUSTEES have full legal and equitable right, title and interest in and to the Pipeline, and that TRUSTEES are fully competent to enter this Agreement, by signature of authorized agents below.
3. That TRUSTEES, as lead agency and awarding body, shall be solely responsible for the Pipeline and the system including all environmental oversight and CEQA compliance, contract engineering, bid, award and administration in accordance with all governing federal, state and local laws, and all requirements of funding agencies, including without limitation applicable prevailing wage and competitive bidding requirements, and upon completion that the System shall be vested in TRUSTEES.
4. They waive all rights, and release the CITY as to, any and all obligation regarding the Pipeline and the system including relocation and replacement.

SECTION III

MISCELLANEOUS:

1. GOVERNING LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

2. NOTICES

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the party specified below or at such other address as the parties may from time to time designate by written notice.

| CITY: | TRUSTEES: | CSUF: |
|---|---|---|
| City of Fresno Attn: Scott L. Mozier, P.E. Assistant Director/City Engr. Public Works Department 2600 Fresno Street, 4 th Floor Fresno, CA 93721-3623 | CSU Trustees Attn: Elvyra F. San Juan Assistant Vice Chancellor CPDC 401 Golden Shore Long Beach, CA 90802 | CSU Fresno Attn: Cynthia Teniente-Matson Vice President for Administration 5200 N. Barton Fresno, CA 93740 |

3. INDEPENDENT CONTRACTOR

In their respective performance of this Agreement it is mutually understood and agreed that the parties are acting independently. Each party shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction. Each party has independently reviewed this Agreement. Neither party has relied upon any representations or statements of the other not set forth in this Agreement.

4. HOLD HARMLESS

TRUSTEES, shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of TRUSTEES, or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by TRUSTEES of governmental immunities including California Government Code Section 810 et seq.

CITY shall indemnify, hold harmless and defend Trustees and each of the respective officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by TRUSTEES, from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of CITY or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code Section 810 et seq.

In the event of negligence or willful misconduct on the part of TRUSTEES or any of its officers, employees, agents or authorized volunteers, and on the part of CITY or any of its officers, employees, agents or authorized volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative fault as presently established or as may be modified hereinafter.

This Section 4 shall survive termination or expiration of this Agreement.

5. INSURANCE

Without limiting the indemnification of each party as stated in Section 4 above, it is understood and agreed that CITY and Trustees shall each maintain, at their sole expense, insurance policies or self-insurance programs including, but not limited to, an insurance pooling arrangement and/or Joint Powers Agreement to fund their respective liabilities throughout the term of this Agreement. Coverage shall be provided for general liability, automobile liability, and workers' compensation exposure. Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required under this Agreement.

6. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

7. CUMMULATIVE REMEDIES

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

8. NO THIRD PARTY BENEFICIARIES

The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

9. ASSIGNMENT OF AGREEMENT

Nothing contained in this Agreement shall be construed to permit assignment or transfer of any rights under this Agreement and such assignment or transfer is expressly prohibited and void.

10. INTERPRETATION

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

11. COMPLETE AGREEMENT

This Agreement and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between TRUSTEES and CITY, as to the subject matter hereof, and it supersedes all prior representations, understandings, representations and communications, either written or oral. Changes hereto shall not be binding upon either party except when specifically confirmed in writing by the parties' authorized agents.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day, month and year first above written.

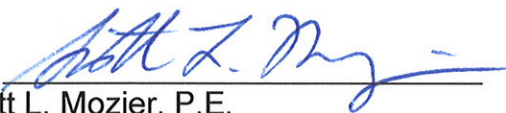
Attachments: Exhibit A: Description/Depiction of Pipeline and System
Exhibit B: Project Schedule

Date: 12-20-2010

APPROVAL RECOMMENDED:


Cynthia Teniente-Matson
Vice President for Administration
California State University, Fresno

APPROVED:

BY: 
Scott L. Mozier, P.E.
Assistant Public Works Director
and City Engineer

APPROVED: TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY

BY: 
Elvyra F. San Juan
Assistant Vice Chancellor
Capital Planning, Design & Construction

ATTEST:

REBECCA E. KLISH
City Clerk

By: 
Deputy 12/20/10

APPROVED AS TO FORM:

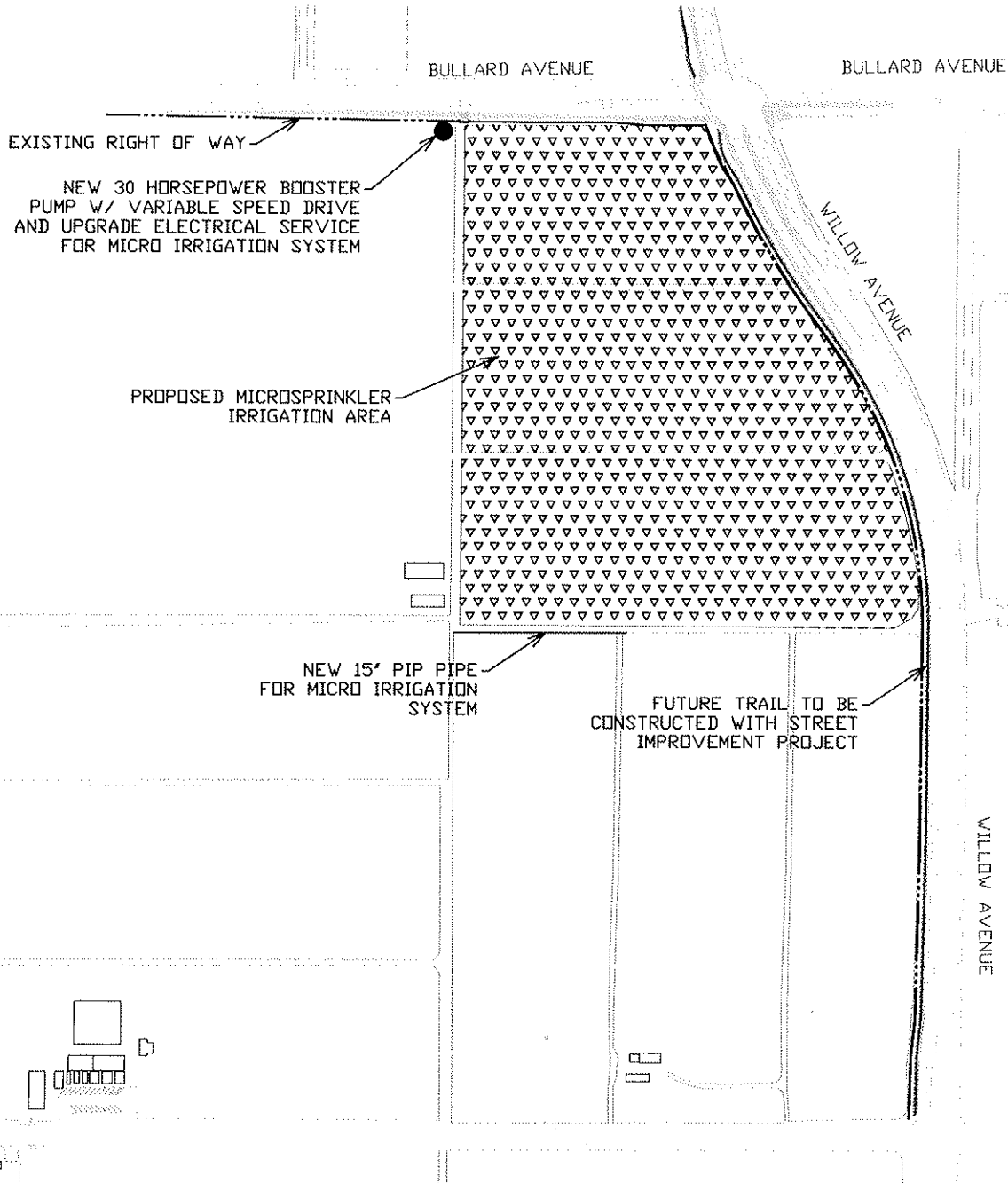
JAMES C. SANCHEZ
City Attorney

By:  12-20-10
Deputy Coyle

EXHIBIT A

COOPERATIVE AGREEMENT

DESCRIPTION/DEPICTION OF PIPELINE AND SYSTEM



NOTES

1. THIS PLAN REPRESENTS THE ENTIRE SYSTEM TO BE CONSTRUCTED WITH THIS CONTRACT. ALL MISCELLANEOUS MATERIALS AND WORK NECESSARY TO COMPLETE THE KEY COMPONENTS OF THE SYSTEM IS INCLUDED IN THIS SCOPE OF WORK.
2. ALL WORK OUTSIDE THE SCOPE OF THIS AGREEMENT IS NOT INCLUDED IN THIS PROJECT.

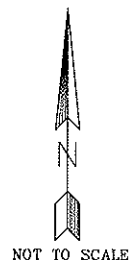
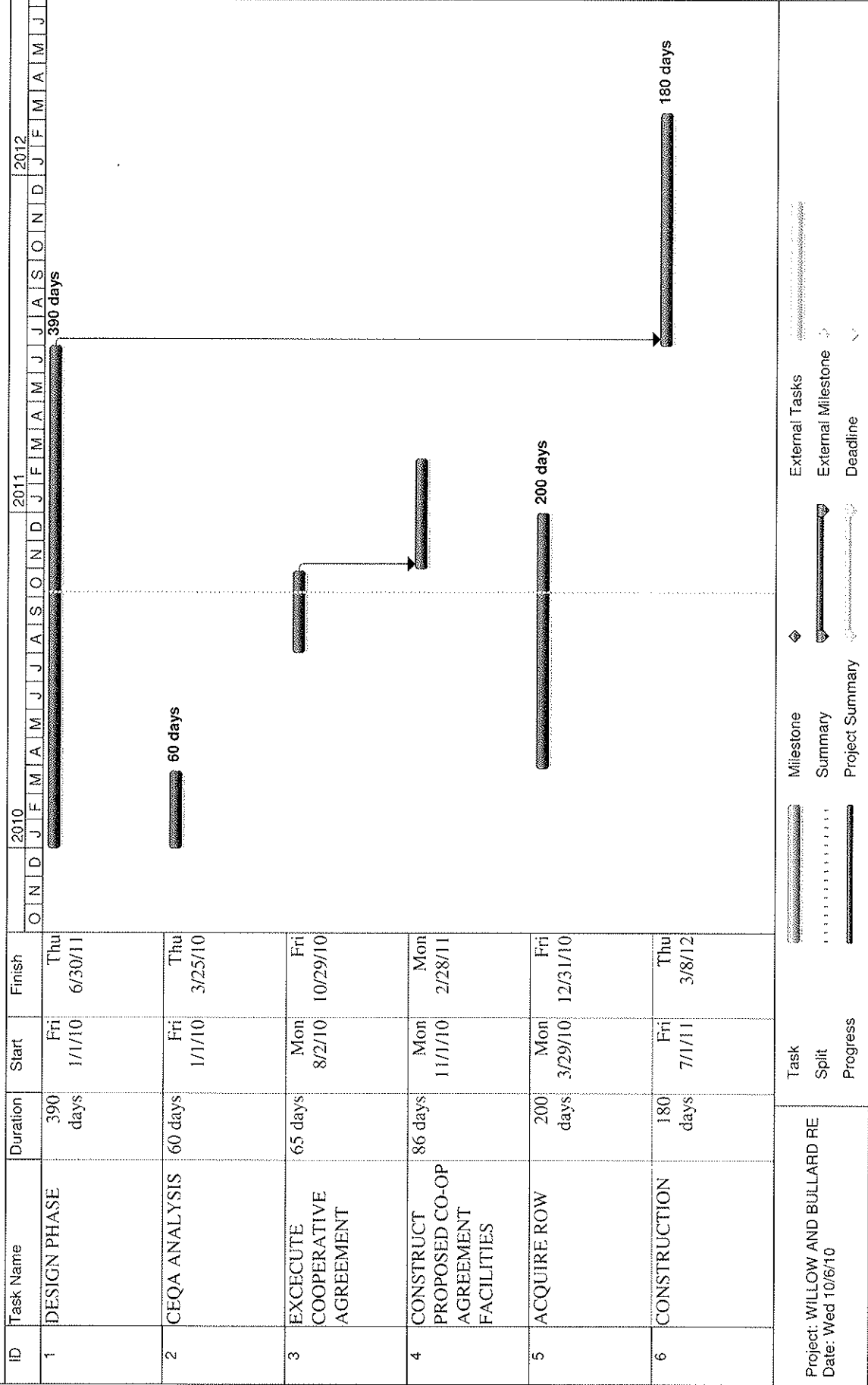


EXHIBIT B

COOPERATIVE AGREEMENT

PROJECT SCHEDULE



Project: WILLOW AND BULLARD RE
Date: Wed 10/6/10



AGENDA ITEM NO.

1 J

COUNCIL MEETING

12/16/10

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

December 16, 2010

FROM: PATRICK N. WIEMILLER, Public Works Director
Public Works Department

BY: EFREN BAÑUELOS, Assistant Director *EB*
Public Works Department, Capital Management Division

RANDALL MORRISON, Project Manager *RMM* *SES*
Public Works Department, Capital Management Division

SUBJECT: AUTHORIZE THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO EXECUTE A COOPERATIVE AGREEMENT WITH THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY FOR AN AGRICULTURAL FARM PIPELINE REIMBURSEMENT NECESSARY FOR THE WILLOW AVENUE STREET IMPROVEMENT PROJECT BETWEEN BARSTOW AVENUE AND ESCALON AVENUE. (COUNCIL DISTRICT 4)

RECOMMENDATION

Staff recommends that the City Council authorize the Public Works Director or his designee to execute a Cooperative Agreement with the Trustees of The California State University for an agricultural farm pipeline reimbursement necessary for the Willow Avenue Street Improvements Project from Barstow Avenue to Escalon Avenue.

EXECUTIVE SUMMARY

The City of Fresno is proposing to widen Willow Avenue from Barstow to Escalon. The widening of Willow Avenue will impact the existing California State University, Fresno (CSUF) agricultural facilities. CSUF currently has an irrigation system within the limits of the proposed widening. Because of the impact, the existing irrigation facilities will need to be modified and relocated. For this reason, the City of Fresno requested, and CSUF agreed, to relocate the irrigation system. The relocation and modification of these facilities will be completed by CSUF and be reimbursed by the City of Fresno. The Cooperative Agreement between the two agencies clearly defines the roles of each agency and identifies the reimbursement amount not to exceed \$91,331.30.

Staff recommends that the City Council authorize the Public Works Director or his designee to execute a Cooperative Agreement with the Trustees of The California State University.

Presented to City Council

Date

12/16/10

Disposition

Per approval

BACKGROUND

Willow Avenue is the bordering City limit between the City of Fresno and the City of Clovis. Currently with new residential and commercial development in the area, this intersection is experiencing traffic congestions. To alleviate the traffic congestion, with the support of City of Clovis and California State University Fresno (CSUF), the City of Fresno applied for and obtained funding from Measure C and Traffic Congestion Relief Program (TCRP) in the amount of \$1,450,000 and \$250,000, respectively.

The street improvement project scope will include widening Willow Avenue from Barstow to Escalon from four lanes to six lanes with a raised median island. The improvements at the intersection of Bullard and Willow will include dual left turn lanes, three thru lanes, and single right turn bays on the Willow Avenue approaches. The Bullard Avenue approaches will include dual left turn lanes and two thru lanes in both directions and one right turn bay on the eastbound direction. Traffic signals at Bullard and Willow Avenues will be modified to accommodate the widening project. Street landscaping will also be installed within the new proposed median island along Willow Avenue and Bullard Avenue. This project also includes the construction of a multipurpose trail along the west side of Willow Avenue.

In order to construct the proposed improvements, the agricultural irrigation system facilities need to be relocated and modified. Staff and CSUF have determined that the most cost effective and efficient way to complete this work is to let CSUF take the lead and the City will reimburse them from the project expense. The total reimbursement cost for CSUF to make required modifications to the agriculture farm pipeline system is not to exceed \$91,331.30. The reimbursement that is to be paid to CSUF qualifies for reimbursement by the grant. This agreement will not have any effect on the City of Fresno budget.

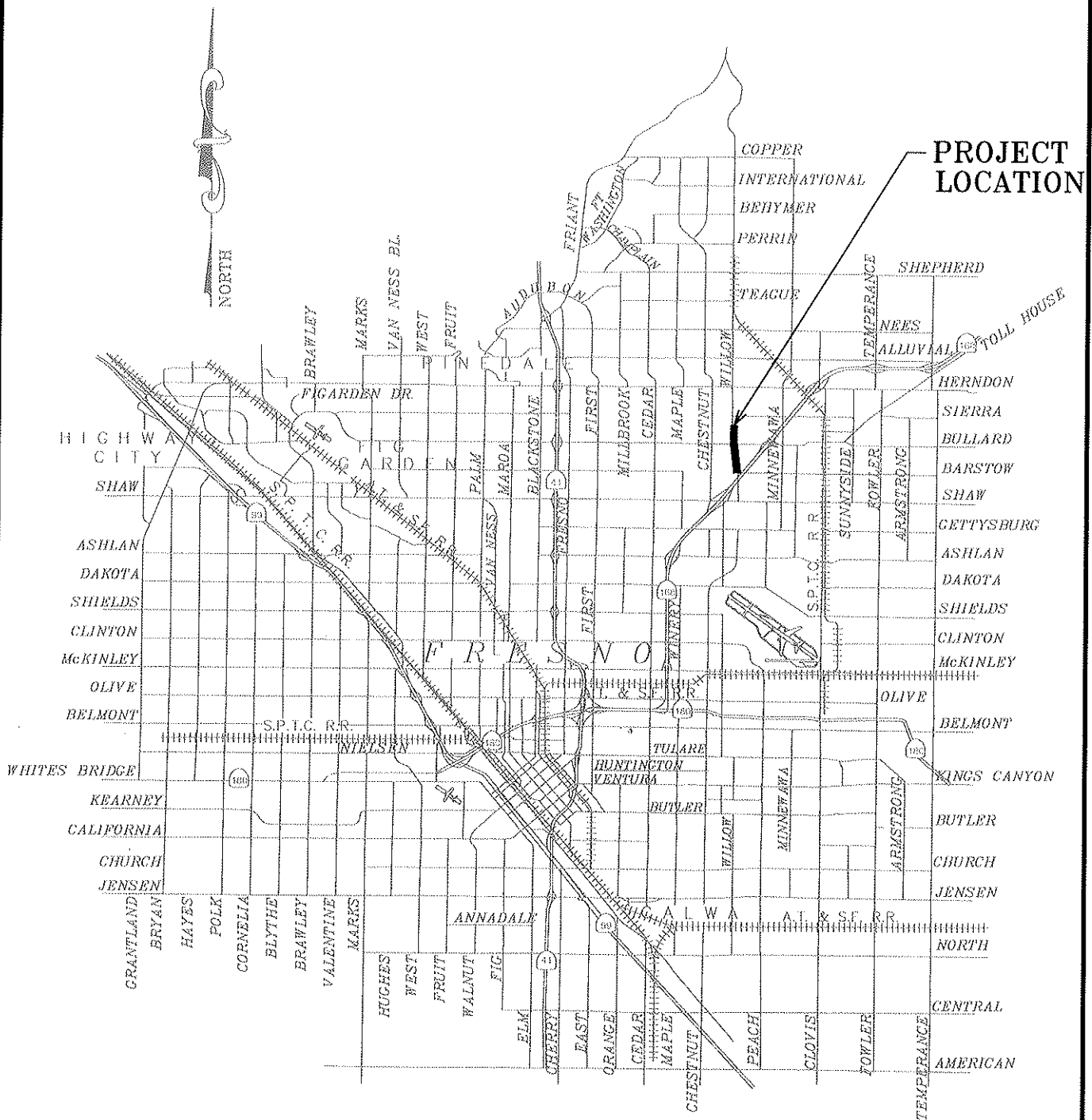
The environmental document, Finding of Conformity to the Master Environmental Impact Report (MEIR) No. 10130 prepared for the 2025 Fresno General Plan, was prepared by Staff and posted with the Fresno County Clerk on April 16, 2010 as document E201010000126 and a Environmental Assessment Number EA-10-011. It was determined that the project conforms to the City's MEIR.

FISCAL IMPACT

Project funding comes from the Measure C Tier 1, Traffic Congestion Mitigation Project (TCRP) and Development Impact Fee.

Attachments:

- Project Vicinity Map
- Cooperative Agreement with the Trustees of The California State University



CITY OF FRESNO - DEPARTMENT OF PUBLIC WORKS

AGRICULTURE FARM PIPELINE REIMBURSEMENT
FOR WILLOW AVENUE STREET IMPROVEMENTS

PROJECT VICINITY MAP

NOT TO SCALE

COUNCIL DISTRICT

4

DATE:

DECEMBER 16, 2010